

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 21 FEBRUARY, 2023

FCT/HC/CV/355/2022

BETWEEN:-

FEDERAL MORTGAGE BANK OF NIGERIA-----

CLAIMANT

AND

- 1. SPIRENT NIGERIA LIMITED**
- 2. ALHAJI ABDULRAHMAN ALIYU**

DEFENDANTS

RULING

This was a case that was originally brought by way of undefended list procedure. The Plaintiff claims against the Defendant are as follows:-

1. An order of this Honourable Court mandating the defendant to pay the Plaintiff the sum of ~~₦~~99,921,514.00 being the loan granted by the Plaintiff to the Defendant on its application
2. The sum of ~~₦~~ 10,000,000.00 as cost of proceeding.

The application is brought pursuant to order 35 rules 1 and 2 of the FCT High Court Civil procedure rules 2015. In support of the

application is an affidavit of 22 paragraphs deposed to by the Applicant and some exhibits attached. The application is dated the 10th November, 2022 the 1st Defendants filed their notice of intention to defend the action dated 10th January, 2023 in support of same is affidavit of 17 paragraphs deposed to by one Aliyu Inuwa. I have gone through the two affidavits for and against and am of the view that from the exhibits attached by the Applicant especially exhibit 1 and 2 I am fully convinced that in the spirit of justice and fair play it is in the interest of justice by transferring this matter to the general cause list essentially this type of procedure is for money liquidated demand. Amount of money that is contained is not the issue now. The fundamental question to be asked here is who is actually supposed to be the Defendant, I have gone through the process filed I have decided that it would be just to transfer this matter to the general cause list. I have hereby deferred on exhibit 1 and this case to be transferred to the general cause list. In matter brought under the undefended list procedure, the Court has a duty to consider the notice of intention to defend as well as the affidavit filed in support of the writ of summons. Even where there is no notice of intention to defend, the Court still has to inquire or examine whether the Plaintiff has made out his claim in the affidavit accompanying the writ see ***OBI VS NKWO MARKET COMMUNITY BANK LTD (2001) 2 NWLR (PT 696) INTERCONTINENTAL BANK LTD VS BRIFARE (2012) 13 NWLR P.1.***

It is on this note I deem it just to do the needful by transferring this matter to the general cause list. I must add here that in consideration of an action brought under the undefended list by the Plaintiff the trial Court is faced with a decision whether to hear the case or transfer it to the general cause list. It must have to begin with a careful scrutiny of the Plaintiff claim and be satisfied that the

action is not contentious and not one that should be placed on the undefended list. The Court owes it a duty to scrutinize the claims and the verifying affidavit with attached documents, if any to ensure that the claims is indeed suitable to be heard under undefended list procedure. Otherwise, it should be transferred to the general cause list. An action for recovery of debt involving accounts is tricky and same guidelines are instructive.

A discrepancy between the amount claimed and the figure that can be ascertained from the supporting evidence, that is the verifying affidavit, raises a contention issues that can be resolved only by being tried. Thus, where the actual indebtedness of the defendant cannot be ascertained from the evidence available without a resort to other extrinsic accounting source, that would operate as a defence which is good enough to justify the transfer of the action to the general cause list to enable it to be tried on the merit regardless of the facts that the Defendant did not give notice of intention to defend. From the available evidence especially the affidavit evidence and particularly exhibit 1 made me consider to transfer this case to the general cause list. I order Claimant and Defendant to file their pleadings.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

G.A Enya :- For the 1st and 2nd Defendants.